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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/526,456

11/30/2005

David Thomas Marr

XA-10292

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181 7590 10/01/2008

MILES & STOCKBRIDGE PC  
1751 PINNACLE DRIVE  
SUITE 500  
MCLEAN, VA 22102-3833

EXAMINER

NIESZ, JASON KAROL

ART UNIT

PAPER NUMBER

3751

NOTIFICATION DATE

DELIVERY MODE

10/01/2008

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ipdocketing@milesstockbridge.com  
sstiles@milesstockbridge.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/526,456	<b>Applicant(s)</b> MARR ET AL.	
	<b>Examiner</b> JASON K. NIESZ	<b>Art Unit</b> 3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 30 November 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 7-14 is/are rejected.
- 7) ☒ Claim(s) 6 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 March 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>11/30/2005</u> .  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Priority***

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

### ***Information Disclosure Statement***

2. The information disclosure statement (IDS) submitted on 11/30/2005 was considered by the examiner.

### ***Claim Objections***

3. Applicant is advised that should claim 9 be found allowable, claim 10 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP 706.03(k).

### ***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claim 8 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 8 recites the limitation "means for stopping the pump." There is insufficient antecedent basis for this limitation in the claim. For the purpose of the application of

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prior art claim 8 will be interpreted as though it reads “means for disconnecting the vacuum source.”

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claim 1 is rejected under 35 U.S.C. 102(a) as being anticipated by XP-002260002.

In Re claim 1 XP discloses a stopper which passes gas in two directions, (indicating that it is bi-directionally valved), a vacuum pump and a gas cylinder.

8. Claims 11 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Broll et al. (DE 3742433 A1).

In Re claims 11 and 12 Broll discloses a method for protecting a liquid from oxygen damage comprising the steps of evacuating the gas in the liquid bottle, introducing a metered quantity of CO<sub>2</sub>, and adding an amount of gas from an annular boiler (abstract).

9. Claims 13 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Simon (US 4,475,576).

In Re claim 13 with reference to Figure 8 Simon discloses a stopper for a wine bottle (28) having a skirt (44) a bi directional valve (48, 32). The examiner notes that the

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resiliency of the valve members (38) indicates that a certain threshold pressure must be reached in order to open said valve.

In Re claim 14 with reference to Figure 8 Simon discloses a flutter valve (38, 42).

***Claim Rejections - 35 USC § 103***

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 2, 3, 5, 7 and 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jenny (US Patent 6,391,629 B1) in view of Angehrn et al (US Patent 6,530,401 B1).

In Re claim 2 with reference to Figure 3 Jenny discloses an apparatus comprising a container with a bi-directional valved stopper (3). With reference to Figure 5 Jenny further discloses a vacuum source (24) communicating with the container and a means for disconnecting said vacuum source (29c). Jenny also discloses an inert gas source (26a) a pneumatic circuit (41) and a means for ceasing the supply of inert gas (29a).

Jenny doesn't disclose a socket.

With respect to Figure 1 Angehrn discloses an apparatus for modifying the atmosphere in a container comprising a socket type connector (E).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Jenny apparatus by using a socket type

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connector to secure the container, in order to prevent movement during atmospheric modification.

In Re claim 3 with reference to Figure 5 Jenny discloses a vacuum pump (24). Jenny doesn't disclose a switch. Jenny instead discloses a valve which is used to disconnect the vacuum pump from the container. Switches were well known in the art as a way to control an apparatus. It would have been obvious to one of ordinary skill in the art to try using either a switch or a valve to disconnect the vacuum source depending on specific application. Modifying the Jenny apparatus by adding a switch would make the device manual and allow the user greater control over the atmospheric modification process.

In Re claim 5 with reference to Figure 5 Jenny discloses a second gas source (26b) and a means for ceasing the supply of a second gas (29b).

In Re claim 7 Jenny discloses all of the limitations but doesn't disclose the use of argon. However, one of ordinary skill in the art would know that the Jenny device was capable of modifying the container atmosphere with any desired gas including argon.

In Re claim 8 with reference to Figure 5 the examiner notes that the "automatic" functioning of the Jenny device (Column 2, lines 1-6), indicates that a controller of some sort actuates both the means for disconnecting said vacuum source and the supply of inert gas.

12. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over XP in view of Angehrn.

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In Re claim 2 XP discloses a stopper which passes gas in two directions, (indicating that it is bi-directionally valved), a vacuum pump and a gas cylinder. XP doesn't disclose a socket, a means for disconnecting the vacuum source or a means for ceasing the supply of inert gas. The step of connecting the CO<sub>2</sub> cylinder to the bottle after the vacuum pump has evacuated all of the air inherently indicates a means for disconnecting the vacuum pump. Furthermore, it was commonly known in the art To use a switching device to cease the supply of a gas to a container once a desired amount of gas had been added. With respect to figure 1 Angehrn discloses a device for modifying the atmosphere in a wine bottle comprising a socket type connector (E).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the XP apparatus by adding a means for ceasing supply of CO<sub>2</sub>, in order to allow a user to control the amount of CO<sub>2</sub> added to the bottle. Furthermore, it would have been obvious to use a socket type connector, as taught by Angehrn, in order to prevent the bottle from shifting relative to the apparatus during evacuation and filling.

13. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jenny in view of Simon.

14. In Re claim 4 with reference to Figure 3 Jenny as applied to claim 2 above discloses all the limitations, including pair of oppositely oriented backflow valves (51, 52). Jenny doesn't disclose a flutter valve; Jenny is silent on the exact nature of said valves. With reference to Figure 8 Simon discloses a container stopper containing two oppositely oriented flutter valves (38, 42) one of which allows gas into a container and

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another of which allows gas to exit the container. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Jenny apparatus by making the two backflow valves flutter valves, as taught by Simon, in order to provide the needed backflow prevention functionality.

15. Claims 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jenny in view of Angehrn in further view of Berresford et al. (US Patent 5,215,129).

In re claims 9 and 10 Jenny in view of Angehrn as applied to claim 2 above discloses all the limitations, but doesn't disclose a switch. With reference to Figure 3 Berresford discloses an apparatus for modifying a container atmosphere comprising a switch (58) which is used to govern the atmosphere modifying process. The examiner notes that a resilient tab, (a type of spring), (56) biases the switch in the off position. Therefore, it would have been obvious to one of ordinary skill in the art to modify the Jenny apparatus by adding the switch from the Berresford reference, in order to prevent the device from functioning when no container is present.

16. Claims 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over XP in view of Angehrn in further view of Berresford et al. (US Patent 5,215,129).

In re claims 9 and 10 XP in view of Angehrn as applied to claim 2 above discloses all the limitations, but doesn't disclose a switch. With reference to Figure 3 Berresford discloses an apparatus for modifying a container atmosphere comprising a switch (58) which is used to govern the atmosphere modifying process. The examiner notes that a resilient tab, (a type of spring), (56) biases the switch in the off position. Therefore, it would have been obvious to one of ordinary skill in the art to modify the



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Jenny apparatus by adding the switch from the Berresford reference, in order to prevent the device from functioning when no container is present.

***Allowable Subject Matter***

17. Claim 6 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

18. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Heath et al. (US Patent 1,406,380) discloses a means for creating a sterile atmosphere in a container comprising evacuating the atmosphere and replacing it with inert gas. Wiser (US Patent 2,729,381) discloses a stopper for a bottle which allows gas to pass in either direction at a threshold pressure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JASON K. NIESZ whose telephone number is (571)270-3920. The examiner can normally be reached on mon-fri 9-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Huson can be reached on (571) 272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jason K Niesz  
Examiner  
Art Unit 3751

/Timothy L Maust/  
for Gregory Huson, SPE of Art Unit 3751